IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

75-1674

SANTA ROSA BAND OF INDIANS, et al.,

Plaintiffs and Respondents

v.

KINGS COUNTY, et al.,

Defendants and Petitioners

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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OPINION BELOW

The decision of the U.S. Court of Appeals for the Ninth Circuit is now reported at 532 F.2d 655.

QUESTION PRESENTED

The question presented by the Petition herein is as follows:

Has Public Law 280, 67 Stat. 588 (1953), codified at 18 U.S.C. §1162 and 28 U.S.C. §1360, conferred upon Kings County, California, jurisdiction to enforce its zoning, construction, and other land use regulation ordinances against housing facilities and appurtenant fixtures located on the Santa Rosa Rancheria, an Indian reservation owned in fee by the United States of America and held in trust for the Santa Rosa (Tache) Band of Indians, when such facilities and appurtenant fixtures have been provided

to Indian residents of the Rancheria by the U.S. Bureau of Indian Affairs (B.I.A.) and U.S. Indian Health Service (I.H.S.) under Congressionally authorized and financed programs of assistance to Indian people?

LAWS INVOLVED

In addition to the federal laws listed by Petitioner, this case involves the following additional laws:

1. 25 U.S.C. §§1, 1a;
2. 25 U.S.C. §2;
3. 25 U.S.C. §13;
4. 25 U.S.C. §476;
5. 42 U.S.C. §2004(a);
6. 85 Stat. 40 (P.L. 92-18, May 25, 1971);
7. 86 Stat. 508 (P.L. 92-369, August 10, 1972).
8. Kings County Ordinance No. 269

The relevant provisions of the above-mentioned laws are set forth in Appendix A hereto.

STATEMENT OF THE CASE

A. Statement of the facts.

1. The Rancheria and its residents.

The Santa Rosa Rancheria (Indian Reservation) comprises 170 acres of land near the city of Lemoore, in Kings County, California. Legal title to the land was acquired and is now held in trust by the United States of America for the exclusive use and benefit of the Santa Rosa Band of Indians. Title to the land was acquired by a stipulated decree of the United States District Court for the District wherein the land is located; by a deed from the Federal Land Bank of Berkeley; and by a judgment of the United States District Court for the District wherein the land is

located. [C.T. pp. 7078, 255].

The Santa Rosa Rancheria is occupied by the Santa Rosa (Tache) Band of Indians, an Indian Tribe organized under the Indian Reorganization Act (25 U.S.C. §476), and the governing body of the Band is recognized by the Secretary of the Interior. [C.T. pp. 78-79, 255].

Mark Barrios is a member of the Santa Rosa Band of Indians, and resides upon an assignment (a plot of tribally-owned land) within the Santa Rosa Rancheria. Due to a lack of funds occasioned by his inability to obtain adequate regular employment, and also by a disabling injury, Mr. Barrios, his wife, and their four children lived for several years in the living room of his father's small home on the Rancheria, sharing the house with six other persons. [C.T. pp. 80-82].

Pete Baga is also a member of

the Band, and also resides upon an assignment within the Santa Rosa Rancheria; he has been seasonally employed at low wages. For several years, Mr. Baga, his wife, and their four children lived in a succession of small wooden shacks, without running water or indoor plumbing, because the family never had sufficient funds with which to obtain safe, adequate, healthful, and comfortable housing. [C.T. p. 83].

2. The B.I.A.'s Housing Improvement Program

In 1972, the Bureau of Indian Affairs, Department of the Interior, informed the Band that a limited amount of money would be available under the B.I.A's Housing Improvement Program (H.I.P.) for use in improving or acquiring housing for Rancheria residents. [C.T. p. 81]. The B.I.A.'s H.I.P. assistance is authorized by 25 U.S.C. §13,

and H.I.P. funds are derived from appropriations under Public Law 92-369 (86 Stat. 508, August 10, 1972). The B.I.A. has promulgated comprehensive administrative guidelines and criteria for the administration and provision of H.I.P. services. [C.T. pp. 85-87, 256].

Early in 1973, both Mr. Barrios and Mr. Baga applied to the B.I.A. for H.I.P. assistance in procuring mobile homes, in order to alleviate the critical housing problems of their respective families as quickly as possible. The B.I.A. instructed each of them to select a mobile home for purchase from a local dealer, and to send all of the documents relating to the transaction to the B.I.A. for that agency's inspection and approval.

Mr. Barrios selected a mobile home costing $6,189.75 and Mr. Baga

selected a home costing $7,140.00. The purchase documents were submitted to the B.I.A., where each was processed and approved for the maximum H.I.P. grant available, $3500, the B.I.A. then issued United States Treasury checks in the amount of $3500 each for the purchase of the mobile homes for Mr. Barrios and Mr. Baga. These checks were payable to the vendor of the homes, and were sent directly to the vendor [C.T. pp. 86, 256].

Upon completion of the purchase transactions, Mr. Barrios was informed by an employee of the mobile home vendor that Kings County permits might be necessary in order to locate and utilize the mobile home on his Rancheria assignment. When Linda Barrios contacted the County for further information, she was told that the mobile home would not be allowable under the

County zoning laws, but that if permission were to be obtained, the County would have to perform an environmental impact assessment, for which a fee of $30.00 would have to be paid. [C.T. pp.81-82]. The Barrios family was further informed that before a street address or any utility service hookups could be obtained for for the new mobile home, payment of fees, application for and issuance of other County permits would be necessary. [C.T. pp. 81 120-121].

3. Kings County Ordinance No. 269

Kings County, a governmental subdivision of the State of California, has enacted a Zoning Ordinance (Kings County Ordinance No. 269), consisting of:

> "a zoning plan designating certain districts and regulations controlling the uses of land, the density of popula-

tion, the uses and locations of structures, the height and bulk of structures, the open spaces about structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provisions of off-street parking and off-street loading facilities." [C.T. p. 259].

The area in which the Rancheria is located is classified as a General Agricultural District, under §402 C(7) of the Kings County Zoning Ordinance. In such a District, the use of a mobile home as a dwelling is not permitted unless prior administrative approval is obtained from the County Zoning Administrator, [C.T. p. 129].

A person wishing to obtain such approval must submit to the Zoning Administrator an application therefor; this application must conform to the requisites of §1802 of the Zoning Ordinance, and must include, inter alia, a detailed site plan, in triplicate,

[C.T. pp. 136, 254].

4. The Indian Health Service's Water and Sanitation Assistance

During the same period in which the Barrios and Baga families were making efforts to acquire their H.I.P. housing, the United States Indian Health Service (I.H.S.), Department of Health, Education, and Welfare, was planning a widespread project to upgrade water systems on several California Indian reservations, including the Santa Rosa Rancheria, and to provide water and sanitation systems for H.I.P. housing on several Reservations, including the Barrios and Baga mobile homes using funds appropriated by P.L. 92-18 (85 Stat. 40, May 25, 1971). [C.T. pp. 107-115].

Prior to the commencement of work by the I.H.S., the County informed said agency that any and all work per-

formed on the Rancheria was subject to County laws, and that County permits and approvals would have to be obtained therefor. [C.T. p. 127].

Neither Mr. Barrios nor Mr. Baga possessed sufficient funds to comply with the procedure mandated for an application for administrative approval under the County Zoning Ordinance, or to pay the permit fees demanded by the County. [C.T. pp. 82, 84]. Compliance with the County ordinances involved herein by the B.I.A. and I.H.S. would increase the cost of providing these services to needy Indians, would prevent the provision of these services on a uniform statewide basis, and would severely restrict the discretion of these agencies in fulfilling their statutory obligations. [C.T. pp. 86, 260].

B. Decisions of the District Court and the Court of Appeals for the Ninth Circuit.

This action was brought by the Santa Rosa Band of Indians and two individual members thereof, seeking declaratory and injunctive relief to prevent officials of Kings County, California, from enforcing County Zoning and Building Ordinances in such a manner as to interfere with the provision of services to the Band and its members by the United States Bureau of Indian Affairs and the United States Indian Health Service.

The court exercised jurisdiction under 28 U.S.C. §1362, in that the action arose under the laws and Constitution of the United States, and was brought by an Indian Tribe with a governing body recognized by the Secretary of the Interior. The District Court made no ruling on its jurisdiction over the claims of the individual defendants.

Cross-motions for summary judgment

were made, and on October 11, 1973, the court issued its memorandum of decision, granting plaintiffs' motion for summary judgment and denying defendants' motion for summary judgment.

Findings of fact and conclusions of law and formal judgment were entered on December 4, 1973. The findings of fact and conclusions of law were modified and were entered in final form on February 4, 1974. The decision of the District Court was not reported.

The judgment, together with the modified findings of fact and conclusions of law, are set forth in Appendix B hereto. From the judgment of the District Court, with the modified findings of fact defendants appealed to the U.S. Court of Appeals for the Ninth Circuit. On November 3, 1975, the U.S. Court of Appeals issued its opinion affirming the decision of the District Court,

except that the Court of Appeals vacated paragraph 3(b) of the District Court's judgment as being overbroad and beyond the relief requested by plaintiffs; the Court of Appeals remanded the case to the District Court in order that the District Court might

> "fashion a judgment consistent with all the fundamentals and on all the bases enunciated by this opinion..., but limited in its language and application to actual or reasonably anticipated grievances arising from disputed ordinances which purport to control what may or must be done on the Indian lands. On remand, the court should make further findings delineating the manner in which any particular County ordinance whose enforcement is enjoined has impermissibly intruded, or threatens to intrude, on Indian use of the Rancheria." (532 F.2d at 669).

ARGUMENT IN OPPOSITION TO GRANTING OF THE PETITION

The decision of the Court of Appeals that P.L. 280 did not confer upon Kings County jurisdiction to enforce

zoning, construction and other land use ordinances against Indians on the Santa Rosa Rancheria is based upon the following independent grounds:

1. The County ordinances at issue are not "civil laws of [the] State...that are of general application to private persons or private property... elsewhere within the State..." within the meaning of P.L. 280;

2. The County ordinances at issue are inconsistent with 25 C.F.R. §1.4

3. The County ordinances at issue interfere with the use, economic development and tribal government of Indian trust lands within the Santa Rosa Rancheria, and thus constitute "encumbrances" within the meaning of P.L. 280;

4. Application of the County ordinances at issue herein would substantially interfere with the provision of desperately needed services to reservation Indians which Congress has authorized and for which Congress has appropriated funds, and would substantially impede the receipt of such services by the Indians intended to benefit therefrom, thus rendering such ordinances inconsistent with federal laws.

Each of the independent grounds for the Court of Appeals' affirmance of the judgment of the District Court rests upon a sound analysis of relevant authority, and thus renders the granting of the Petition herein unnecessary and inappropriate. In reaching its decision as to each of these grounds, the Court of Appeals carefully considered and analyzed the legislative history of P.L. 280, relevant case law, studies by legal scholars, and the cataclysmic effects which an adverse decision would have upon the lives of the Indian people who would be affected thereby. The result of the Court of Appeals' analytical process was its conclusion that, in enacting P.L. 280,

> "Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations." (532 F.2d at 662).

Petitioners contend that the de-

cision of the Court of Appeals is erroneous, and that this error is the direct result of two major defects in the analytical approach by which the decision was reached. Specifically, petitioners argue that the Court of Appeals initially erred in finding that P.L. 280 is ambiguous, thus necessitating use of the rule of statutory construction which requires that ambiguities in statutes pertaining to Indians shall be resolved in favor of the Indians. Petitioners, then argue that having improperly invoked this canon of constuction, the Court of Appeals proceeded to misconstrue both the legislative history of P.L. 280, as well as present federal Indian policy.

Petitioners further contend that the Court of Appeals compounded its misperception of present federal Indian policy by considering such present policy to be relevant to its construction of

P.L. 280. Petitioners are especially disturbed by the Court of Appeals' conclusion that courts

> "are not obligated in ambiguous circumstances to strain to implement a policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship." (532 F.2d at 663).

That the general approach and analytical process of, and the result reached by the Court of Appeals in this case is entirely correct, and that Petitioners' criticisms of that general approach, analytical process and result is totally incorrect, was effectively decided by the decision of the U.S. Supreme Court in Bryan v. Itasca County, _____U.S.L.W. ____, ____ U.S. ____, No. 75-5027 (Slip opinion, June 14, 1976).

In Bryan, the Supreme Court considered whether, P.L. 280, conferred upon a State or county jurisdiction to assess personal property taxes upon

an Indian owned mobile home located on an Indian reservation in a P.L. 280 state. The county contended that its personal property tax laws were "civil laws of [the] State... that are of general application to private persons or private property [,]" and that because these laws were not among those expressly excepted from the grant of jurisdiction under P.L. 280, such laws "shall have the same force and effect within such Indian country as they have elsewhere within the State...".

In reaching its decision, the Supreme Court found that P.L. 280 was indeed ambiguous, and that its interpretation required the use of the

> "'eminently sound and vital canon,' Northern Cheyenne Tribe v. Hollowbreast, ____ U.S. ____, ____ n.7, 44 U.S.L.W. 4655 (U.S. May 19, 1976). that 'statutes passes for the benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of the Indians.'" [Slip opinion, pp. 19-20].

To assist in construing the ambiguities in P.L. 280, the Supreme Court examined the legislative history of P.L. 280, as well as current federal Indian policy. The Court found that,

> "Piecing together as best we can the sparse legislative history of §4 [28 U.S.C. §1360], subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; ... This construction finds support in the consistent and uncontradicted references in the legislative history to 'permitting' 'State courts to adjudicate' civil controversies arising on Indian reservations, H.R. Rep. No. 848, at 5, 6 (emphasis added), and in the absence of anything remotely resembling an intention to confer general state civil regulatory control over Indian reservations. In short, the consistent and exclusive use of the terms 'civil causes of action,' 'aris[ing] in,' 'civil laws of general application to private persons and private property,' and 'adjudicat[ion],' in both the Act and its legislative history virtually compels our conclusion that the primary intent of §4 was to grant jurisdiction over pri-

vate civil litigation involving reservation Indians in state court." [Emphasis in original]. Slip Opinion, pp. 11-12.

Having compared the legislative history and language of P.L. 280 with other termination acts emanating from the same Congress (see, e.g., footnote 15 of the Bryan slip opinion), having cited with approval the finding of the Court of Appeals herein that P.L. 280 was only one of many types of assimilationist legislation under active consideration in 1953, and having quoted with approval the Court of Appeals' statement that courts,

> "are not obliged in ambiguous instances to strain to implement a policy which Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship," [532 F.2d at 655],

the Supreme Court concluded that,

> "if Congress in enacting P.L. 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." (Slip opinion p. 18).

Conclusion

The result reached by the Court of Appeals in this case is completely consistent with the decision of the Supreme Court in Bryan v. Itasca County, supra, and in reliance upon virturally identical authorities. In reaching its decision in Bryan v. Itasca County, id., the Supreme Court heard and considered virtually all of the arguments made in support of the Petition herein, and rejected each of them. Petitioners have set forth no other arguments which could result in a reversal of the decision of the Court of Appeals herein, while being consistent with the decision in Bryan v. Itasca County, id.

Accordingly, the Petition should be denied.

Dated: July 16, 1976

Respectully submitted,

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APPENDIX A

25 U.S.C. § 1.

There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate.

25 U.S.C. § 1a.

For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior pursuant to law. Subject to the supervision and direction of the Secretary, the Commissioner is authorized to delgate, in like manner, any powers and duties so delegated to him by the Secretary, or vested in him by law, to the assistant commissioners, or the officer in charge of any branch, division, office, or agency of the Bureau of Indian Affairs, insofar as such powers late to action in individual cases aris-

ing under general regulations promulgated by the Secretary of the Interior or the Commissioner of Indian Affairs pursuant to law. Such delegated powers shall be exercised subject to appeal to the Secretary, under regulations to be prescribed by him, or, as from time to time determined by him, to the Under Secretary or to an Assistant Secretary of the Department of the Interior, or to the Commissioner of Indian Affairs. The Secretary or the Commissioner, as the case may be, may at any time revoke the whole or any part of a delegation made pursuant to this section, but no such revocation shall be given retroactive effect. Nothing in this section shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this section be deemed to convey authority to delegate any power to issue regulations.

25 U.S.C. § 2.

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

25 U.S.C. § 13.

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of

the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

25 U.S.C. § 476.

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to orgaize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such

estimates to the Bureau of the Budget and the Congress.

42 U.S.C. § 2004(a).

(a) In carrying out his functions under this chapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized-

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

(b) The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under

under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the Untied States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: Provided, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: Provided further, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

Public Law 92-18, 85 Stat. 40, May 25, 1971:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Second Supplemental

Appropriations Act, 1971") for the fiscal year ending June 30, 1971, and for other purposes, namely:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"Indian health services", $6,988,000;

Bureau of Indian Affairs

"Education and welfare services", $9,735,000;

Public Law 92-369, 86 Stat. 508, Aug. 10, 1972

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending June 30, 1973, and for other purposes, namely:

Bureau of Indian Affairs

Education and welfare services

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information

or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops, $301,056,000.

Construction

For construction, major repair and improvement of irrigation and power systems, buildings, utilities, and other facilities; acquisition of lands and interests in lands; preparation of lands for farming; and architectural and engineering services by contract, $55,960,000, to remain available until expended.

Kings County Ordinance No. 269.

Sec. 101. Purposes and objectives of the ordinance.

The zoning ordinance is adopted to preserve, protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the zoning ordinance is adopted in order to achieve the following objectives:

a. To provide a precise plan for the physical development of the county in such a manner as to achieve progressively the general arrangement of land uses depicted in the General Plan.

b. To foster a harmonious, convenient, workable relationship among land uses and a wholesome, serviceable and attractive living environment.

c. To promote the stability of existing land uses which conform with objectives and policies of the General Plan and to protect them from inharmonious influences and harmful intrusions.

d. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the county.

e. To promote the beneficial development of those areas which exhibit conflicting patterns of use.

f. To prevent excessive population densities and overcrowding of the land with structures.

g. To promote a safe, effective traffic circulation system.

h. To foster the provision of adequate off-street parking and truck loading facilities.

i. To facilitate the appropriate location of public facilities and institutions.

j. To protect and promote appropriately located agricultural, commercial, and industrial pursuits in order to preserve and strengthen its economic base.

k. To protect and enhance real property values.

l. To conserve the county's natural assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.

m. To coordinate policies and regulations relating to the use of land with such policies and regulations of incorporated cities of the county in order to: facilitate transition from county to municipal jurisdiction that land which is first developed in an unincorporated area and is subsequently annexed to a city; foster the protection of farming operations in areas of planned urban expansion, and ensure unimpeded development of such new urban expansion that is logical, desirable and in accordance with objectives and policies of the General Plan.

Sec. 103. Components of the zoning ordinance.

The zoning ordinance of a zoning plan designating certain districts and regulations controlling the uses of land, the density of population, the uses and locations of structures, the height and bulk of structures, the open spaces about structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provision of off-street parking and off-street loading facilities.

Sec. 107. Zoning administrator.

The Board of Supervisors of the County of Kings declares that there is a need for the office of Zoning Administrator to function in the County and hereby establishes such Office of Zoning Administrator to perform the duties and exercise the powers as prescribed in this ordinance and the Government Code in such a way as to promote the

public health, safety and welfare, to further the objectives of the zoning plan and to do substantial justice.

The Planning Director of the County of Kings shall be the Zoning Administrator. The Zoning Administrator may delegate any of the County Planning Staff to act in his behalf.

Sec. 402. AG General Agricultural District.

C. Permitted uses; administrative approval:

7. House trailer or coach as a guest house residence or farm employee housing incidental to a permitted conditional use for a maximum period of two (2) years.

I. Fences, walls and hedges:

Fences, walls and hedges exceeding six (6) feet in height shall be permitted except that no solid fence, wall or hedge shall exceed three (3) feet in height within an area of a corner lot, or a lot backing onto a street, described as follows: That area on the street side of a diagonal line connecting points, measured from the intersection corner, fifty (50) feet on a minor street side of the lot and seventy (70) feet on a major street side of a lot.

J. Yard requirements:

1. Front Yard: The minimum front yard shall be not less than fifty (50) feet except along those streets and highways where a greater setback is required by other ordinances of the

county, and further provided that the distance from the center line of a street to the rear of the required front yard shall not be less than eighty (80) feet.

K. Height of structures:

No limitation.

L. Distance between structures:

The minimum distance between a structure used for human habitation and a structure housing livestock or poultry shall be forty (40) feet.

M. Off-street parking and off-street loading facilities:

Off-street parking facilities and offstreet loading facilities shall be provided on the site for each use as prescribed in Article 15.

O. General provisions and exceptions:

All uses shall be subject to the general provisions and exceptions prescribed in Article 17.

Sec. 601. Purposes and application.

This district is intended primarily for application to those rural and urban areas of the county where it is necessary and desirable to provide permanent open spaces to protect natural watercourses, drainage basins and sloughs which are necessary to safeguard the health, safety and welfare of the people.

Sec. 602. Permitted uses.

A. Flood control channels; water pumping stations and reservoirs; irrigation ditches and canals and ditch and canal rights-of-way; settling and water conservation recharging basins; parkways.

B. Recreation areas, parks, playgrounds.

C. Incidental and accessory structures and uses located on the same site as a permitted use.

D. Signs, subject to the provisions of section 612 of this Article.

Sec. 603. Permitted uses; administrative approval.

None.

Sec. 604. Conditional uses; zoning board approval.

None.

Sec. 701. Purpose.

To provide living areas which combine certain of the advantages of both urban and rural location by limiting development to very low density concentrations of one-family dwellings and permitting limited numbers of animals to be kept for pleasure or hobbies, free from activities of a commercial nature.

Sec. 702. RRA Rural Residential Agricultural District.

C. Permitted uses; administrative approval:

The following uses may be permitted in accordance with the provisions of Article 18:

7. Accessory structures and uses located on the same site as a conditional use which has been approved by the board of zoning adjustment, except for those uses which are owned or operated by a public agency.

Sec. 703. RRE Rural residential estate district.

A. Application:

This district is intended primarily for application to subdivision of land in agricultural and scenic areas to:

1. Permit the opportunity of developing estate-type lots which, because of their size, cannot be economically accommodated within urban areas; and
2. To encourage the provision of estate-type lots as a subdivision of land which will assure the provisions of at least those minimum physical improvements necessary to protect the health, safety and general welfare of people living on estate-type lots or parcels.

Sec. 1501. Purposes and application.

In order to alleviate progressively or to prevent traffic congestion and shortage of curb spaces, off-street parking and off-street loading facilities shall be provided incidental to new land uses and major alterations and enlargements of existing land uses.

The number of parking spaces and the number of loading berths prescribed in this article or to be prescribed by the County Planning Commission shall be in proportion to the need for such facilities created by the particular type of land use. Off-street parking and loading areas are to be laid out in a manner which will ensure their usefulness, protect the public safety and, where appropriate, insulate surrounding land uses from their impact.

Sec. 1601. Home occupations.

B. Home occupations; rural:

Rural home occupations in Agricultural District shall comply with the following regulations:

1. A home occupation shall be independently operated and limited in employment to the residents of the property.

2. All structures used shall be non-commercial in appearance and shall be harmonious with the agricultural area.

3. There shall be no open storage of equipment or supplies, except when enclosed by a six (6) foot solid fence.

4. A home occupation shall not generate excessive truck or automobile traffic.

5. There shall be no sales of products or services not produced on the premises, except where the sale of such products is clearly secondary

6. The aggregate sign area shall be limited to fifty (50) square feet, with no individual sign exceeding thirty (30) square feet in area.

7. All additional points of access (to any street, road or highway) shall be determined by the Zoning Administrator with regard to the nature of the traffic circulation in the area.

Sec. 1709. Nonconforming uses and structures.

A. Purposes:

A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this ordinance but which, under this ordinance, does not conform with the use regulations for the district in which it is located. This section is intended to limit the number, extent, and duration of nonconforming uses and to serve their gradual elimination by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this ordinance and by probibiting their restoration after destruction.

A nonconforming structure is a structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance, does not conform with the standards of coverage, yard spaces, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. While permitting the use and maintenance of

nonconforming structures, this section is intended to limit the number and extent and duration of nonconforming structures and to service their gradual elimination by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this ordinance and by prohibiting their restoration after destruction.

C. Alterations and additions to nonconforming uses:

No structure, the use of which is nonconforming, shall be moved, altered or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use, except that a structure housing a nonconforming residential use located in an A, UR, RA, R or RM District may be moved, altered or enlarged, provided that the number of dwelling units is not increased.

No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use.

No nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site of another strucutre or site which did not occupy on the effective date of this ordinance or of the amendment thereto which caused it to become a nonconforming use or in such a way as to displace any conforming use occupying a structure or site.

L. Building permit:

Before a building permit shall

be issued for any building or structure proposed as part of the approved change of nonconforming use application, the Building Department shall secure written approval from the Zoning Administrator that the proposed building location is in conformity with the site plan and conditions approved by the Planning Commission or Board of Supervisors. Such written approval from the Zoning Administrator shall be submitted to the Building Department within twenty-four (24) hours following the request.

Before a building may be occupied, the Building Official shall certify to the Zoning Administrator that the site has been developed in conformity with the site plan and conditions approved by the Planning Commission or Board of Supervisors. Such certification shall be made within twenty-four (24) hours from the time of final building inspection.

Sec. 1801. Purpose.

The purpose of requiring administrative approval of certain enumerated uses is to enable the zoning administrator to determine whether or not the proposed use is in conformance with the intent and provisions of this ordinance.

Sec. 1802. Procedure.

A. An application for administrative approval shall be submitted to the zoning administrator. The application shall include a statement of the use proposed and a site plan in the same manner as prescribed in section 2102. The zoning administrator may require such other information as he deems nec-

essary from any applicant for administrative approval.

B. The zoning administrator shall review the proposed use and site plan to ascertain all facts pertinent to it and to ascertain that findings required can be made, and, in writing, shall state either approval or denial of the proposed use and shall also state the findings and reasons for such decision within ten (10) days, excluding Saturdays, Sundays and legal holidays, of the filing of the application.

C. The zoning administrator shall impose such conditions on the granting of the proposed use as he deems necessary in order to achieve the purposes of this ordinance.

Sec. 1803. Findings.

The zoning administrator may grant an application for administrative approval as the permit was applied for or in modified form, if, on the basis of the application and evidence submitted, he is able to make the following findings:

1. That the proposed use complies with all applicable provisions of this ordiance.
2. That the following are so arranged that traffic congestion is avoided and pedestrian and vehicular safety and welfare are protected and there will be no adverse effect on surrounding property:

(a) Facilities and improvements.
(b) Vehicular ingress, egress and internal circulation.
(c) Setbacks.
(d) Height of buildings.
(e) Location of service.
(f) Walls.
(g) Landscaping.

3. Proposed lighting is so arranged as to reflect the light away from adjoining properties.
4. Proposed signs will not, by size, location, color or lighting, interfere with traffic or limit visibility.
5. That any use involving a business, service or process not completely enclosed in a structure, when located on a site abutting on or across a street or an alley from an alley from a residential district, shall be screened by a solid fence or wall or a compact growth of natural plant materials not less than six (6) feet in height if the use is found to be unsightly.
6. That no process, equipment or materials will be used which, in the opinion of the zoning, administrator, will be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare or unsightliness or to involve any hazard of fire or explosion.
7. That the proposed use and structure will be harmonious with existing structures and land in the vicinity.

Sec. 2101. Purposes and application.

The purpose of the site plan is to enable the zoning administrator to make a finding that the proposed development is in conformity with the intent and provisions of this ordinance and to guide the building department in the issuance of building permits. The provisions of this article shall apply to the following uses:

A. Any use listed within a particular zoning district as a permitted use subject to administrative approval.

Sec. 2102. Site plan.

A. The applicant shall submit three (3) prints of the site plan to the zonng administrator. The site plan shall be drawn to scale and shall indicate clearly and with full dimensions the following information:

1. Name and address of applicant.
2. Lot dimensions and legal description of property.
3. All buildings and structures: Location, elevation, size, height, proposed use.
4. Yards and space between buildings.
5. Walls and fences: Location, height and materials.
6. Off-street parking: Location, number of spaces and dimensions of parking area, internal circulation pattern.
7. Access-pedestrian, vehicular, service: Points of ingress and egress, internal circulation.
8. Signs: Location, size and height.
9. Loading: Location, dimensions, number of spaces, internal circulation.
10. Lighting: Location and general nature, hooding devices.
11. Street dedications and improvements.

12. Landscaping: Location and type.
13. Such other data as may be required to permit the zoning administrator to make the required findings.

Sec. 2104. Building permit.

Before a building permit shall be issued for any building or structure proposed as part of the approved site plan, the building department shall secure written approval from the zoning administrator that the proposed building location is in conformity with the site plan and conditions approved by the zoning administrator, planning commission or board of supervisors. Before a building may be occupied, the building official shall certify to the zoning administrator that the site has been developed in conformity with the site plan and conditions approved by the zoning administrator, planning commission or board of supervisors.

Sec. 2402. Duties of building official.

The Building Official shall be the official responsible for the enforcement of this ordinance. In the discharge of this duty, the Building Official shall have the right to enter on any site or to enter any structure for the purpose of investigation and inspection provided that the right of entry shall be exercised only at reasonable hours. The Building Official may serve notice requiring the removal of any structure or use in violation of this ordinance on the owner or his authorized agent, on a tenant, or on an architect, builder, contractor or other person who commits or participates in any violation. The Building Official may call upon the District Attorney to institute necessary legal proceedings to enforce the provisions of this ordinance, and the District Attorney is hereby authorized to institute appropriate actions to that end. The Building Official may call upon the Sheriff and his authorized agents to assist in the enforcement of this ordinance.

MODIFIED FINDINGS OF FACT
AND CONCLUSIONS OF LAW.

The above-entitled action came on regularly for hearing on October 9, 1973, on cross-motions for summary judgment or, in the alternative, plaintiffs' motion for preliminary injunction. George Forman, California Indian Legal Services, Berkeley, California, appeared for plaintiffs, and Larry G. McKee, Deputy County Counsel, Hanford, California, appeared for defendants. The Court having received and considered the pleadings, exhibits, affidavits, memoranda and arguments of the parties, and having determined that there is no genuine issue of material fact, makes the following findings of fact and conclusions of law:

1. The Santa Rosa Band of Indians occupies the Santa Rosa Rancheria in Kings County, California. The Rancheria consists of approximately 170 acres, legal title to which is held in trust for the exclusive use and benefit of the Band and its members by the United States of America. The United States acquired the lands of the Rancheria by a stipulated decree of the United States District Court for the then Southern District of California, No. B-66, February 28, 1921; by a deed from the Federal Land Bank of Berkeley, August 16, 1937; and by a judgment of the United States District Court for the then Southern District of California, No. 202 Civil, September 28, 1946.

2. The Santa Rosa Band of Indians is organized under 25 U.S.C. §476 (Indian Reorganization Act), and the governing body of the Band is recognized by the Secretary of the Interior.

3. The Band has brought this action for declaratory and injunctive relief on its own behalf and upon behalf of its members, to establish that officials of Kings County are without jurisdiction to enforce the Kings County Zoning Ordinance (No. 269), and other related County Ordinances on the Rancheria in such a manner as to hinder, impede, or interfere with either the provision of benefits and services to the Santa Rosa Rancheria or residents thereof by agencies of the Untied States, or the receipt of such federal benefits and services by the Rancheria or residents thereof.

4. Kings County is a governmental subdivision of the State of California, possessing such powers and jurisdiction over the lands and persons therein as are conferred by the laws and Constitution of the State of California. Charles Gardner is the Planning Director for Kings County, and has primary administrative responsibility for enforcing Kings County Ordinance No. 269, the County Zoning Ordinance.

5. The United States Bureau of Indian Affairs (B.I.A.), maintains a Housing Improvement Program for the purpose of alleviating distress of low-income Indians residing in sub-standard housing. This program is authorized by 25 U.S.C. §13, and funds for H.I.P. assistance are derived from Public Law 92-369 (86 Stat. 508, August 10, 1972). The B.I.A. has promulgated administrative criteria and guidelines for the

administration and provision of H.I.P. aervices.

6. In February, 1973, Mark Barrios and Pete Baga, residents of the Santa Rosa Rancheria and members of the Band, applied to the B.I.A. for H.I.P. assistance in procuring safe and comfortable housing for themselves and their respective families, by means of purchasing specific mobile homes. Both the Barrios and Baga families have been living in inadequate, sub-standard, unhealthy and crowded housing facilities. Neither family possesses financial resources to independently improve the inadequate housing and sanitation facilities which they presently utilize, and can improve their living conditions only with the assistance of housing and sanitation programs administered by the B.I.A. and the Indian Health.

7. The Barrios and Baga requests for H.I.P. assistance were evaluated by the B.I.A. pursuant to its administrative criteria and guidelines; Barrios and Baga were determined to be eligible for H.I.P. assistance, and the B.I.A. determined that the purchase of the particular mobile homes in question, to be located upon assignments of tribal land on the Rancheria, would comply with the standards and further the purposes of the H.I.P. program.

8. Upon this basis, the B.I.A. granted Barrios and Baga $3500 each, the maximum allowable for H.I.P. assistance for acquisition of new housing, in the form of U.S. Treasury checks payable directly to the vendor of the two mobile homes. The full purchase price of the Barrios mobile home is $6,189.75; the price of the Baga home is $7,140.00. The balance of the purchase price of each home is to be paid by the recipients

thereof.

9. Acting in coordination with the H.I.P. services provided to Barrios and Baga, under authority conferred generally by 42 U.S.C. §2001 et seq., and specifically by 42 U.S.C. §2004(a), the Indian Health Service (I.H.S.), an agency of the United States Public Health Service, Department of Health, Education and Welfare, is providing water and sanitation systems to the Barrios and Baga mobile homes, and is also upgrading the community water system of the entire Rancheria. Funds for these services were appropriated by Public Law 9218 (85 Stat. 40, May 25, 1971). The I.H.S. has made an assessment of the environmental impact of the installation of the water and sanitation systems on the Rancheria, and has determined that the installation and use of these systems would have no significant adverse effect upon the surrounding environment.

10. Kings County has attempted and is attempting to require plaintiffs Barrios and Baga to comply with its Zoning Ordinance and with its Building and Structures Ordinance as a precondition to utilization of the H.I.P. assisted mobile homes and I.H.S. water and sanitation facilities. Absent such compliance, the County would forbid the use of these facilities.

11. The Kings County Zoning Ordinance and the Building and Structures Ordinance have as their stated general purpose to preserve, protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. The specific objectives of the Zoning Ordinance are:

a. to provide a precise plan for the physical development of the county in such a manner as to achieve progressively the general arrangement of land uses depicted in the General Plan.
b. To foster a harmonious, convenient, workable relationship among land uses and a wholesome, serviceable and attractive living environment.
c. To promote the stability of existing land uses which conform with objectives and policies of the General Plan and to protect them from inharmonious influences and harmful intrusions.
d. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the county.
e. To promote the beneficial development of those areas which exhibit conflicting patterns of use.
f. To prevent excessive population densities and overcrowding of the land with structures.
g. To promote a safe, effective traffic circulation system.
h. To foster the provision of adequate off-street parking and truck loading facilities.
i. To facilitate the appropriate location of public facilities and institutions.

j. To protect and promote appropriately located agricultural, commercial, and industrial pursuits in order to preserve and strengthen its economic base.
k. To protect and enhance real property values.
l. To conserve the county's assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.
m. To coordinate policies and regulations relating to the use of land with such policies and regulations of incorporated cities of the county in order to: facilitate transition from county to municipal jurisdiction that land which is first developed in an unincorporated area and is subsequently annexed to a city; foster the protection of farming operations in areas of planned urban expansion, and ensure unimpeded development of such new urban expansion that is logical, desirable and in accordance with objectives and policies of the General Plan. (§101)

12. The Zoning Ordinance consists of:

"a zoning plan designating certain districts and regulations controlling the uses of land, the density of population, the uses and locations of structures, the height and bulk of structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provision of off-street parking and off-street loading facilities."
(§103).

13. The area of Kings County in which the Santa Rosa Rancheria is located is designated as a General Agricultural District, pursuant to Zoning Ordinance §402. Under this designation, the use of a mobile home as a residence is a permitted use contingent upon securing the administrative approval of the County Planning Director, acting as Zoning Administrator; such approval may be granted for a maximum of two years, upon each application.

14. In order to obtain administrative approval under the Zoning Ordinance, it is necessary for an applicant therefore to pay a fee of $30.00 for an environmental impact assessment, to be performed by the county. Under Zoning Ordinance §2101 et seq., the applicant must submit for approval a comprehensive site plan in triplicate, showing in detail how the site will be used; approval of the site plan is contingent upon compliance with standards and requirements for landscaping, street dedications, yard size, parking facilities, and other factors.

15. Under the Building and Structures Ordinance (Chapter 5, Kings County Code), permits are required for water and sanitation facilities such as those to be provided by the I.H.S., and for the connection of electric power. Fees charged by the County for these permits total $19.20 for each mobile home involved herein.

16. The application of County

Zoning and Building Ordinances to housing and improvements thereto provided to reservation Indians by the B.I.A. and the I.H.S. under programs by which said agencies are exercising authority and performing responsibilities conferred upon them by Congress, and using funds appropriated therefor, interferes with the provision of these services by said agencies and with the receipt of such services by the reservation Indians intended by Congress to benefit therefrom. Compliance with County Zoning and Building Ordinances for such housing and improvements thereto would increase the cost of such services, prevent the provision of services on a uniform statewide basis, and unduly restrict the discretion of these federal agencies in exercising the authority and meeting the responsibility conferred upon them by Congress.

17. The following conclusions of law, insofar as they be construed as findings of fact, are so found by this Court to be true in all respects.

CONCLUSIONS OF LAW

1. The foregoing findings of fact, insofar as they be construed as conclusions of law, shall be considered as conclusions of law.

2. This action arises under the Constitution and laws of the United States, and is brought by an Indian tribe with a governing body recognized by the Secretary of the Interior. This Court has jurisdiction of this action under 28 U.S.C. §1362, and the Band possesses sufficient interest in the subject matter of the action to give it standing to maintain this suit.

Sierra Club v. Morton, 405 U.S. 727 (1972); Fort Mojave Tribe v. La Follette, 478 F.2d 1016 (9th Cir. 1973).

3. 25 U.S.C. §13 confers upon the B.I.A., acting under the supervision of the Secretary of the Interior, the responsibility for directing, supervising and expending such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States. The B.I.A. is authorized to expend appropriated funds for the purpose of general support, relief of distress, conservation of health of Indians, development of water supplies, and repair and improvement of buildings and facilities.

4. Under Public Law 92-369 (86 Stat. 508, August 10, 1972), Congress appropriated funds for use, inter alia, in providing and improving housing facilities for Indians. The B.I.A. Housing Improvement Program utilizes funds appropriated by P.L. 92-369 in a manner consistent with the purposes of that Act. The B.I.A.'s expenditure of P.L. 92-369 funds for H.I.P. assistance is within the authority and in fulfillment of the responsibility conferred upon it by 25 U.S.C. §13.

5. The B.I.A. has adopted valid and comprehensive administrative criteria and guidelines for the administration of H.I.P. funds. The evaluation and receipt of applications for H.I.P. assistance and the provision of such assistance is a valide exercise of the authority conferred upon the B.I.A. by 25 U.S.C. §13.

6. No federal statute requires that the provision to or receipt by

Indians of B.I.A. services pursuant to 25 U.S.C. §13 be conditioned upon compliance with State or local Zoning or Building Ordinances, or subjects the authority of the B.I.A. to make a determination as to what type of housing best meets the needs of particular Indians in particular circumstances, or the right of Indians to receive same, to control by State or local governments.

7. The I.H.S. is providing and upgrading water and sanitation systems on the Santa Rosa Rancheria under the authority of 42 U.S.C. §2004(a), utilizing funds appropriated by P.L. 92-18. These systems are being constructed in conformity with standards promulgated by the I.H.S. The environmental assessment performed by the I.H.S. is required by the National Environmental Policy Act, 42 U.S.C. §4321. Davis v. Morton 469 F.2d 592 (9th Cir. 1972).

8. No federal statute requires that the provision to or receipt by Indians of I.H.S. water and sanitation services pursuant to 42 U.S.C. §2004(a) be conditioned upon compliance with State or local Zoning Building Ordinances, or subjects the authority of the I.H.S. to provide such services, or the right of Indians to receive same, to control by State or local governments.

9. The deed and court decrees by which the United States obtained and holds title to the lands of the Santa Rosa Rancheria in trust for the Band are agreements by which the United States holds, and is obligated to protect and maintain said lands for the use, benefit, residence and sustenance

of the Band. 25 U.S.C. §13, 42 U.S.C. §2004(a), P.L. 92-369 and P.L. 92-18 are part of a statutory scheme to effectuate and further these agreements. The Kings County Zoning Ordinance and Building and Structures Ordinance are land use regulations the enforcement of which is inconsistent with these agreements and the statutes enacted in furtherance thereof.

10. The B.I.A. and the I.H.S. are involved in the provision of the housing, water and sanitation services and facilities at issue herein to such a significant degree that the application and enforcement of local zoning and building ordinances would significantly interfere with, burden and hinder these agencies in the performance of their lawful functions. Local laws may not be enforced in such a manner as to interfere with, burden or hinder federal agencies in the performance of lawful functions. Oklahoma City v. Sanders, 94 F.2d 323 (10th Cir. 1938); United States v. City of Chester, 144 F.2d 415 (3rd Cir. 1944); United States v. Philadelphia, 147 F.2d 291 (3rd Cir. 1945); City of Birmingham v. Thompson, 200 F.2d 505 (5th Cir. 1942).

11. Where federal agencies act within their authority in providing facilities and services to Indians pursuant to a federal statutory scheme, the United States has so occupied the field of agency activity as to exclude the application of non-federal regulations which would otherwise control such facilities or services. The statutory scheme need not even be expressed by a specific statute or regulation. Warren Trading Post v. Arizona State

Tax Commission, 380 U.S. 685 (1965); Cramer v. United States, 261 U.S. 219 (1923); see also, Rice v. Sante Fe Elevator Corp., 331 U.S. 218 (1947). In this case, the authorization and appropriation Acts under which the services are being provided demonstrate an express Congressional intent to preempt the field of regulating federally provided or assisted housing, water and sanitation facilities and services for Indians residing upon Indian reservations.

12. Under 18 U.S.C. §1162 and 28 U.S.C. §1360 (P.L. 280), the State of California and its political subdivisions are without jurisdiction to regulate the use of Indian trust land in a manner inconsistent with any federal statute, agreement or regulation promulgated pursuant thereto. Because the Kings County ordinances at issue herein are inconsistent with federal statutes and agreements, P.L. 280 does not authorize the enforcement of these ordinances against H.I.P. assisted homes or water and sanitation systems provided to the residents of the Santa Rosa Rancheria by the I.H.S.

13. P.L. 280 makes applicable only laws of the State of California. The County ordinances at issue herein are not laws of the State within the meaning of P.L. 280. Donelon v. New Orleans Terminal Co., 474 F.2d 1108 (5th Cir. 1973). Thus, Kings County is without jurisdiction to enforce these Ordinances on the Santa Rosa Rancheria.

14. 25 U.S.C. §231 grants State officials authority to inspect health conditions, but does not give authority to enforce health regulations. The

ordinances at issue herein are health and safety regulations. See, e.g. Zoning Ordinance §101. Thus, because County officials are not State officials within the meaning of that section, 25 U.S.C. §231 does not confer upon officials of Kings County any jurisdiction to enforce the regulations at issue herein.

15. There being no genuine issue of material fact, plaintiffs are entitled to the entry of a summary declaratory judgment that Kings County is without jurisdiction to enforce its Zoning or Building and Structures Ordinance against housing or water and sanitation facilities provided to Indian Reservation residents under programs for assistance administered by the United States Bureau of Indian Affairs or the United States Indian Health Service.

16. Plaintiffs are entitled to a permanent injunction restraining defendants from enforcing the Kings County Zoning or Building and Structures Ordinance against housing or water and sanitation facilities provided to Indian Reservaion residents under programs for assistance administered by the United States Bureau of Indian Affairs or the United States Indian Health Service.

17. Plaintiffs are entitled to their costs of suit.

DATED: February 4, 1974

/s/ M.D. Crocker
United States District Judge

JUDGMENT

This matter came on for hearing on October 9, 1973, on cross-motions for summary judgment, or, in the alternative, plaintiffs' motion for preliminary injunction.

The Court, Honorable M.D. Crocker, U.S. District Judge, presiding, having tried the issues and having heretofore made and filed its Findings of Fact and Conclusions of law, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That defendant Kings County and all agencies and employees thereof, is without jurisdiction to enforce the Kings County Zoning Ordinance, or any other ordinance, upon the lands or against the residents of the Santa Rosa Rancheria, in such a manner as to hinder, impede, or interfere with in any manner whatsoever the provision of services to the Rancheria or any resident thereof by the Bureau of Indian Affairs or any other federal agency pursuant to any Act of Congress or regulation promulgated pursuant thereto;

2. That grants of funds to Indian Reservation residents by the Bureau of Indian Affairs under its Housing Improvement Program for the purpose of acquiring, repairing or improving housing facilities, and Indian Health Service projects to provide water and sanitation

facilities for Reservation Indians, constitute the provision of services which said agencies are authorized and obligated to provide under 25 U.S.C. §13 and P.L. 92-369 (B.I.A.), 42 U.S.C. §2001 et seq., and P.L. 92-18 (I.H.S.), and any alteration, repair, maintenance, or acquisition of such facilities provided by or with the assistance of these agencies pursuant to said statutes is exempt from County regulation;

3. That Kings County, Charles Gardner, the Kings County Planning Commission, and any and all other County agencies and employees thereof, and any and all persons working in concert with them or under their control, are permanently enjoined from:

a. impeding, hindering, or interfering with or attempting to impede, hinder, or interfere with, in any manner whatsoever, the provision of services to the Santa Rosa Rancheria or any resident thereof by the Bureau of Indian Affairs or any other federal agency under any Act of Congress or regulations promulgated pursuant thereto;

b. enforcing or attempting to enforce compliance with any County ordinance in such a manner as to impede, hinder, obstruct, interfere with, or add expense or inconvenience to the alteration, repair, maintenance, or acquisition of housing facilities or appurtenances there-

to, and utilization thereof, by any resident of the Santa Rosa Rancheria, when such alteration, repair, maintenance, or acquisition is financed, in whole or in part, with funds provided by the Bureau of Indian Affairs or any other federal agency under any Act of Congress or regulations promulgated pursuant thereto;

4. That plaintiffs be awarded their costs of suit.

DATED: December 4, 1973

/s/ M.D. Crocker
United States District Judge